

THE DEMAND FOR LAND

In a push for more public infrastructure, Nigeria needs to address its land governance issues

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Right of way acquisition in Nigeria is a delicate issue that requires finding the right balance between the public need for land and the protection of landowner property rights. Planning for infrastructure is necessary for the economic growth and development of any region, as well as for competitiveness in international markets and sustainable development. When land acquisition does not follow the required processes, the potential for corruption and abuse of power can arise.

The delivery of basic services like water, electricity and road development will directly benefit any community and significantly improve public welfare. A fundamental prerequisite is the availability of land, which is characteristically limited in supply and sometimes poses a constraint in the development process. Suitable property for specific projects may not be available, and when appropriate land actually does exist, it may be privately owned.

One of the problems of right of way acquisition is that it sets up a confrontation between the acquiring authority and the people so that the proposed development runs the risk of being stigmatized as something undesirable.

As in other countries, when there is an overriding public purpose, the government can use the power of eminent domain to obtain the land. However, the process used in Nigeria poses many problems, because even though compulsory acquisition is based on power of eminent domain, the process does not easily pass the land to the state for development. And even though the mechanism used in the administration of land for power projects is not working properly, fixing that alone cannot deliver appreciable tracks of land for public infrastructure until the land governance issues are resolved.

Complying with the Law

Despite the plethora of laws relating to land acquisition rights by the Nigerian government for public infrastructure,



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there is still a wide gap between the government's desire to provide infrastructure and the citizens' enthusiasm to accept the project by making their land available. In addressing some of the issues, we must evaluate whether the laws that govern right of way acquisition in Nigeria are functioning. A proper and valid acquisition of land must be subject to strict compliance with relevant provisions of the law. We must also examine the criteria used for developing a more efficient and equitable land acquisition process, and balance this with the other challenges that right of way acquisition agents are experiencing in Nigeria.

When examining Nigeria's Land Use Act Cap L.5, L.F.N. 2004, it is crucial to consider the three conditions needed for a valid government acquisition. These include serving notice, public purpose and payment of compensation.

1 Service of Notice on Dispossessed Owner: A survey of the area affected must follow the acquisition notice. The law states "the revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the governor and notice therefore shall be given to the holder." Notice must be served personally on the dispossessed owner before substituted service through publication in the newspaper and the government gazettes. Therefore, in the absence of notice of revocation, any purported

revocation of right of occupancy will be illegal and considered non-compliance with the law.

2 Public Purpose: The land acquired must be for public purpose. The law defines public purposes as far as a right of way is concerned to include: a) For or in connection with sanitary improvement of any kind for obtaining control over land contiguous to any part or over land the value which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the government, and b) For obtaining control over land acquired for or in connection with development of telecommunication or provision of electricity. It is this element of public interest that justifies compulsion. If the purpose of compulsory acquisition is for the benefit of a private individual, such acquisition does not comply with the provision of the law.

3 Compensation: The Land Use Act provides for compensation as follows: "The land for an amount equal to rent if any, paid by the occupier during the year in which the right of occupancy was revoked, building, installation or improvement thereon, for the amount of the replacement cost . . . Together with interest at the bank rate for delayed payment of compensation, and crops on land for an amount equal to the value as prescribed and determined by the appropriate officer."

It should be noted that about 60 to 70 percent of every right of way acquisition passes through cropland, forest or wetland. The law is salient on the method and basis for assessing compensation for crops, mainly because many projects have been compromised by government officials in the ministry of works who were acting outside their assigned roles. In regards to compensation, the law only recognizes those who have ownership rights, excluding those who are directly or indirectly subjected to restriction on the access to land resources. Interestingly, the law prohibits the courts from having jurisdiction to inquire into the amount or adequacy of any compensation paid under the act.

A Comparison to Pipeline Projects

In the Oil Pipelines Act of 2004, the law made provision for licenses to be granted for the construction, maintenance and operation of pipelines incidental and supplemental to oil fields and oil mining. It empowers the minister to grant a survey permit to a holder of an oil-prospecting license to enter on any land upon the route specified in the permit. However, this

cannot be done without the consent of the owner, which must proceed from a mandatory notice to the occupier by at least 14 days.

It further states that, in the event of dispute as to the amount of compensation to be paid or as to whether or to whom any compensation shall be paid the provision, “If there be any dispute as to whether any compensation is payable under any provision of this act or if so as to the amount thereof, or as to the person to whom such dispute shall be determined by a magistrate exercising civil jurisdiction in the area . . . And if there be no such magistrate by the high court exercising jurisdiction in the area . . . There shall be an appeal to the court of appeal.

Let us contrast this with the provisions of the Land Use Act that refers to disputing land use and excludes the jurisdiction of the court to inquire about the amount of compensation to be paid under the act. It states, “In determining compensation in accordance with the provisions of this section, the court shall apply the provision of the Land

Use Act so far as they are applicable and not in conflict with anything in this act . . .” This section of the Oil Pipelines Act is very clear in its inconsistency with the provisions of the Land Use Act.

The basis of assessment under the Oil Pipelines Act is the open market value. It states that if a claim is made under the act, “the court should award such compensation as it considers just in respect of any damage done to any buildings, crops or profitable trees... and in addition may award such sum in respect of disturbance (if any) as it may consider just.”

The act defines an oil pipeline to mean a pipeline for the conveyance of mineral oils, natural gas and any of their derivatives or components. It gives the licensee the power to construct, maintain and operate an oil pipeline including the power to construct maintain and operate on the route of such pipelines for roadways, cell towers and electric power cables. So why do we always resort to the provisions of the Land Use Act in matters of oil/gas acquisition when the Oil Pipelines Act has clearly provided for the basis of assessment?

In Nigeria’s electric power sector reform, this act deals with acquisition of land and access rights. It empowers the Nigeria electricity regulatory commission to make a declaration that land is required by licenses for the purpose of generation and distribution of electricity. The law states: “Where the president issues a notice, the governor shall in accordance with the provisions of the Land Use Act, revoke the existing right of occupancy respecting the land and grant a certificate of occupancy in favor of the concerned licensee in respect of the land identified by the commission in such notice . . . Who shall be entitled to claim compensation in accordance with the provisions of the Land Use Act.”

The 1999 Constitution of the Federal Republic of Nigeria states, “No moveable property or any interest in an immovable property shall be



Only just over half of Nigerians have access to electricity, and it is still harder for businesses to hook up to the grid than almost anywhere else.

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taken possession of compulsorily, and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria, except in the moment and for the purposes prescribed by a law that, among other things, a) Requires the prompt payment of compensation therefore, and b) it gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

Developing a More Equitable Process

In order for compensation to be deemed adequate, it must satisfy these three conditions: 1) The affected property owners are paid all the losses incurred as agreed during a harmonized negotiation (or hearing) in an arm's length sale transaction; 2) Payment is made by considering the physical factors; non-sentimental value is taken into account; and 3) The date of valuation is to be based on the date of first proposal to acquire the land and not when it was been actually acquired.

The African Charter on Human and Peoples' Rights of 1986 states, "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws." However, the nature of land rights for indigenous citizens is another challenge.

Secure rights to land and other natural resources are essential for their livelihood, and numerous international statements and declarations recognize those rights. The International Labour Organisation's convention concerning indigenous and tribal peoples in independent countries sets out that: "The rights of ownership and possession of [indigenous people] over the lands which they traditionally occupy shall be recognized. In addition,

measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities."

The compulsory acquisition of land for infrastructure is seen as one of the extreme actions that a government can take against its citizens, especially when the process lacks transparency. The process should be fair and equitable to all. Thus, facts should determine those who are to obtain compensation. There should be opportunities open to the dispossessed owners to object and challenge the decision to acquire their land, or challenge the compensation paid in court or in alternative dispute resolution if dissatisfied with the amount of compensation. There should be provision for bodies of judicial and quasi-judicial, which can give an independent decision.

Seeking the Right Balance

Good land governance is necessary to achieve a balance between the needs of the government to acquire land. The acquisition—and the process by which that power is exercised—is under the power of government. Unfortunately, the consensus is that whatever benefits are provided are eroded by inefficiency and inequity. Acquisition reform is crucial in order to meet the new standards of international best practices.

There must be transparency in rights of way acquisition process. The officials should be forthcoming and open in the process through service of notice to dispossessed owner, stating the purpose of acquisition. They should let the

people know how the project is going to impact their community. The citizens are likely to respond positively—or at least with less hostility—if they can understand how the taking of their property fits into a wider scheme of public interest. All stakeholders should be involved in making decisions about the nature of compensation to be made available. At all times, the community or their agents should be fully involved in matters of compulsory and right of way acquisition.

In seeking the balance between the public need for land and the protection of property rights of the people, there must be a respect for the human rights of owners and occupiers of the land to be acquired. Our greatest challenge in Nigeria is to improve land governance. This will be defined by our capacity to develop policies, processes and regulatory controls by which land is managed so as to improve its access for a sustainable public infrastructure provision in this country. ✪

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